

Exhibit  
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Swainston Deposition Transcript Excerpt

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

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4 DARLENE CARTER, an individual; )  
and DAVID BIANCO, an individual, )

5 )  
Plaintiffs, )

6 )

vs. ) CASE NO.

7 ) 2:19-CV-01779-APG-BNW

LIBERTY MUTUAL INSURANCE, a )

8 foreign entity; LIBERTY INSURANCE )

CORPORATION, a foreign )

9 corporation, DOES I-X; ROE )

CORPORATIONS I-X, inclusive, )

10 )

Defendants. )

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17 DEPOSITION VIA ZOOM OF LANE SWAINSTON

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LAS VEGAS, NEVADA

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TUESDAY, NOVEMBER 24, 2020

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24 REPORTED BY: DONNA E. MIZE, CCR NO. 675, CSR 11008

25 JOB NO: 688908

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<p style="text-align: right;">Page 38</p> <p>1 them to pay us. I assume it was the two insurance 2 carriers.</p> <p>3 Q. Who was the public adjuster?</p> <p>4 A. I don't recall. I would have to dig that 5 information out.</p> <p>6 Q. Do you remember the name of the company?</p> <p>7 A. No, I don't. It's been a few years ago.</p> <p>8 Q. Your recollection is by virtue of that 9 engagement you were given access to and read written 10 claim handling policies and procedures?</p> <p>11 A. I had PMKs come to the site from the 12 insurance carrier and that's when that discussion took 13 place. I don't recall necessarily that they had their 14 procedures written out to show me, but they were the 15 ones that had written the procedures and we discussed 16 at length different approaches to the work that would 17 reduce the friction that was developing.</p> <p>18 Q. It sounds like at least with regard to the 19 Black Bear Diner, I will call it dispute that you were 20 involved in, you don't recall reading written insurance 21 company claim handling policies and procedures; is that 22 true?</p> <p>23 A. I don't. I think they might have had one of 24 their manuals with them and might have referred to it, 25 but I don't know for sure.</p>	<p style="text-align: right;">Page 39</p> <p>1 Q. Have you ever do you believe reviewed written 2 insurance company claim handling policies and 3 procedures?</p> <p>4 A. Yes. For example, we used to offer a service 5 to firms, Maryland Casualty again comes to mind, where 6 we went to their office in Sacramento and met with 7 their underwriters, their adjusters and other teams 8 within their organization to give them feedback on some 9 of the procedures that they had. We talked to them 10 about claims resolution and how some of the 11 decision-making processes they were involved in either 12 helped or made things worse in a claim. Our purpose 13 was to assist them to make things easier for us when we 14 got hired on a matter.</p> <p>15 Q. When was that?</p> <p>16 A. That's been over a decade. That's some time 17 ago. That was one of our initial meetings like that. 18 From a marketing standpoint we decided we would offer 19 at no charge those kind of training sessions to 20 insurance carriers, to owners of properties, to general 21 contractors and developers, the subcontractors and so 22 we made a presentation that's tailored to those kind of 23 groups. We do presentations at no cost to law firms 24 where we talk about use of experts and technology and 25 different types of lawsuits. Often times we are</p>
<p style="text-align: right;">Page 40</p> <p>1 involved in premises liability and we get involved in 2 helping law firms understand how to get the most out of 3 their experts.</p> <p>4 Q. It sounds like what you are referring to in 5 that response is you provide guidance about how to 6 utilize consultants for the purpose of discerning 7 information that could be useful for dispute resolution 8 or claim resolution; is that true?</p> <p>9 A. Yes, that often involves different 10 applications of technology. We sometimes have been 11 brought in on claims where our charge was to help put a 12 team together to answer the claim.</p> <p>13 Q. In those circumstances what you've been asked 14 to do is apply your expertise with regard to the 15 construction process and associated standards to 16 determine what information is impactful for the claim 17 and how to get it; is that true?</p> <p>18 A. Yes. Combined with analysis of failure to 19 assist in finding out what went wrong and special 20 measurement to preserve a scene. We will do infrared 21 laser scanning outdoors and we have a laser scanner 22 that has a range of 330 meters. Depending on how we 23 use that, we can get extremely specific and accurate 24 measurements of anything in that scene, especially if 25 that scene is going to be altered going forward.</p>	<p style="text-align: right;">Page 41</p> <p>1 Q. I'm worried we are getting a little far 2 afield so I'm going to discuss something slightly 3 different.</p> <p>4 Have you seen the expert designations 5 prepared by the plaintiff for your consulting and 6 opinions for this matter?</p> <p>7 A. I believe so.</p> <p>8 Q. Did you contribute to those?</p> <p>9 A. I believe so, yes. I spoke to them about -- 10 obviously, they told me what they wanted me to do and 11 then I spoke to them about what I was proposing to do 12 to accomplish that assignment.</p> <p>13 Q. For the initial expert --</p> <p>14 A. You are talking about the designation of me 15 as a plaintiff's expert; is that correct?</p> <p>16 Q. Yes, sir. Your recollection is you believe 17 you had seen that document and that its contents were 18 fine with you?</p> <p>19 A. I believe so.</p> <p>20 Q. The initial expert disclosure states as 21 follows under your name. Lane Swainston is a principal 22 consultant and expert as to construction, engineering, 23 standards and repair as well as the valuation thereof 24 and is expected to testify regarding those matters 25 stated in his report as well as any other related</p>

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<p style="text-align: right;">Page 42</p> <p>1 matters as such information is discovered or provided 2 to. It says Ms. Swainston but I'm sure it's intended 3 to be Mr. Swainston and included in any additions, 4 updates or revisions to the report produced herein. 5 Is that an accurate description of your 6 description in your involvement and anticipated scope 7 of testimony in this matter? 8 A. I think it generally is, yes. 9 Q. You have referenced insurance a couple times 10 so I want to understand. Are you intended to provide 11 any sort of expert opinions with regard to any aspect 12 of insurance in this matter? 13 A. Only to the extent I might offer some of my 14 experiential input with respect to how long things 15 should take to resolve an insurance claim. 16 Q. When you say that I think what you mean is 17 you have had involvement with insurance companies 18 through your consulting and have through that developed 19 some impressions in terms of how long certain aspects 20 of claims should take; is that true? 21 A. Yes. Sometimes we get brought in, for 22 example, when an insurance carrier draws things out 23 unnecessarily and we have to analyze the impacts of 24 that on the project or loss. 25 Q. I think what you are saying is there have</p>	<p style="text-align: right;">Page 43</p> <p>1 been times when delays related to conduct by insurance 2 companies has had an effect on construction and 3 conditions and repairs; is that right? 4 A. I think it could be delays, it could be 5 intransigents with respect to coverage. In such cases 6 I have seen insurance carriers when we got access to 7 their records and their policy was to say no as many 8 times as possible that they could get away with it 9 instead of exploring a resolution. That's been 10 exceptional. I don't see that very often but some 11 carriers have tended to be intransigent. 12 I'm speaking from the standpoint of being 13 their expert as well as the standpoint of being the 14 expert for a plaintiff that was pursuing a claim 15 against the carrier. 16 Q. What do you mean when you say intransigent? 17 A. In the face of information that would 18 indicate that there should be a resolution to a problem 19 that was covered under the policy. When I see an 20 insurance carrier continue to say no with no reasonable 21 backup for that decision I call that intransigent. 22 Q. When you use that term and context, which you 23 are meaning as an insurance company denying coverage 24 without a reasonable basis? 25 MR. MACK: Form.</p>
<p style="text-align: right;">Page 44</p> <p>1 THE WITNESS: I think that's part of it. 2 BY MR. GREEN: 3 Q. What are the other parts? 4 A. I think some carriers simply have more of a 5 hard-nosed approach where they think if they say no 6 enough that people will die in a war of attrition and 7 just give up. Often times most people don't have the 8 kind of financing to fight an insurance carrier that 9 has a bevy of lawyers both in house and outside 10 counsel. 11 Again, I'm saying this as less of a frequency 12 but it happens. That is where things like bad faith 13 get thrown around by people and I think people start to 14 be disappointed in contractors that are involved and 15 disappointed in insurance representatives and sometimes 16 disappointed in lawyers. 17 Q. For the purpose of our deposition I want to 18 make sure that I understand as best I can the scope of 19 the opinions that you are going to give in this matter. 20 I don't believe you have given any opinions in any of 21 your reports with regard to bad faith or status of 22 compliance with covenants or implied covenants. 23 Are you going to give any opinions with 24 regard to that? 25 A. To the extent I'm going to tell the story of</p>	<p style="text-align: right;">Page 45</p> <p>1 how this has been drawn out over time and how that 2 resulted in additional damage it may indirectly speak 3 to those issues. 4 My purpose would not be to give an exhaustive 5 analysis of what an insurance carrier should do. My 6 purpose will be to identify what happened here and that 7 is an extraordinary set of circumstances. That's not 8 typical for an insurance claim. 9 Q. You are not going to give any opinion of bad 10 faith; is that true? 11 A. Well, I'm not going to use the term bad 12 faith, but what I'm going to describe is going to look 13 like and sound like bad faith. 14 Q. I think what you mean when you say that is 15 you're going to state opinions based upon what you 16 understand to be the chronology, but those opinions 17 relate to the impact on damage to the home and the 18 repairs that are required and the associated cost; is 19 that true? 20 A. I think that's part of it. Another part of 21 it is the fact that people were making decisions when 22 they hadn't even been to the job site. They were 23 relying either on someone else's photographs or someone 24 else's description and making decisions that I felt 25 were uninformed. I found it to be extraordinary that</p>

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<p style="text-align: right;">Page 46</p> <p>1 one of the key experts in this matter has never been to 2 the job site.</p> <p>3 Q. Who is that?</p> <p>4 A. I believe it was the gentleman that offered 5 the report on behalf of Liberty Mutual, William 6 Trigwell. He talks about how he didn't go to the site 7 and made measurements using Google Earth. I found that 8 to be outrageous. I didn't want to be too bias, but I 9 contacted a colleague who is also a certified 10 professional aerial photography like myself.</p> <p>11 I'm a certified master photographer, and I 12 explained to him that I was involved in a matter where 13 somebody was doing quantity takeoffs using Google Earth 14 and he burst out laughing. I think he thought I was 15 kidding.</p> <p>16 When it comes down to that type of thing we 17 either like to go to the site and measure things. We 18 went to the site here on two occasions, or we will use 19 the imagery that's available through the county. The 20 county has aerial photography shot once a year, and 21 that is intended to be able to be used for measurement. 22 The idea that an expert would use Google Earth for 23 anything other than verifying, for example, that 24 something was on a site but to use it for measurements 25 and offer that as a professional approach I can't</p>	<p style="text-align: right;">Page 47</p> <p>1 relate to that.</p> <p>2 Q. You are not giving any opinions with regard 3 to compliance with the Nevada Unfair Practices Act; is 4 that true?</p> <p>5 A. I hadn't planned on that, no.</p> <p>6 Q. You haven't prepared any opinions like that 7 either; is that true?</p> <p>8 A. That's correct. My commentary will probably 9 relate to those kind of issues, but I'm not coming in 10 as an expert on those particular aspects of law.</p> <p>11 Q. You are not giving any opinions with regard 12 to the content of the policy and its terms; is that 13 true?</p> <p>14 A. I'm not sure. There might be some aspects of 15 the policy where somebody might ask a question I can't 16 anticipate right now.</p> <p>17 Q. You have not prepared any opinions like that 18 at this point; is that true?</p> <p>19 A. No, I haven't.</p> <p>20 Q. You will not give any opinions with regard to 21 compliance with claim handling, standards or 22 procedures; is that true?</p> <p>23 A. Only to the extent that I've already 24 explained. There may be some commentary where I 25 answer, for example, should it take this long to</p>
<p style="text-align: right;">Page 48</p> <p>1 resolve this type of damage on a house like this, and I 2 can categorially say no, it shouldn't, that's 3 outrageous; and I'm qualified to make that comment.</p> <p>4 Q. You have not prepared any opinions with 5 regard to compliance or noncompliance with any 6 insurance standards of policies and procedures; is that 7 true?</p> <p>8 A. Correct. Anything that I have prepared would 9 be used indirectly. I'm going to speak to timing, I'm 10 going to speak to responsiveness, I'm going to speak to 11 what happened on this particular project, and that 12 could very easily then be fit up against the template 13 of what the law requires.</p> <p>14 Q. My point in those questions, and I think that 15 you have gathered it, is to confirm you do not intend 16 to provide any testimony with regard to insurance; is 17 that true?</p> <p>18 A. Yes, I'm not an insurance guy. I do work for 19 them, I advise them but I'm not planning on giving some 20 exhaustive review of the NRS when it comes to insurance 21 requirements.</p> <p>22 Q. What you are going to give testimony about is 23 the construction related aspects of this matter and 24 that will include discussion with regard to how long it 25 should take to achieve certain components of</p>	<p style="text-align: right;">Page 49</p> <p>1 investigation and construction.</p> <p>2 Do I understand that correctly?</p> <p>3 A. Yes. Included in that would be inspection of 4 the residence to prevent further damage, for example, 5 and/or timely resolution of roof leaks so the interior 6 doesn't continue to be damaged.</p> <p>7 Q. I think we have been going for an hour now 8 that we have gotten reconnected. Why don't we take a 9 five minute break.</p> <p>10 (A recess was taken.)</p> <p>11 BY MR. GREEN:</p> <p>12 Q. Back on the record after a quick break.</p> <p>13 Mr. Swainston, I have report documents from 14 you. I have two of them. One is dated September 13, 15 2019 and one of them is dated July 30, 2020.</p> <p>16 Are those all the reports you prepared for 17 this matter, excluding the supplemental report that is 18 in process?</p> <p>19 A. That's correct.</p> <p>20 Q. Before we start talking about them are there 21 any changes that you think need to be made to either of 22 those documents?</p> <p>23 A. No. There might be some clarification in my 24 supplemental but no, I don't see any changes.</p> <p>25 Q. The September 13, 2019 report, this is a</p>